



LOCATIONS WITHIN THE FAR WHERE "PERFORMANCE-BASED" SERVICE IS PART OF THE TEXT



Text is current as of 17 May 03, FAC 2001-13 and does not include coverage pertaining to performance-based payments/financing. To confirm accuracy of the text subsequent to 17 May 03, please check the current version of the FAR. Cites precede the text.

2.101 -- Definitions.

" **Performance-based**  contracting" means structuring all aspects of an acquisition around the purpose of the work to be performed with the contract requirements set forth, in clear, specific, and objective terms with measurable outcomes as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.

7.103 -- Agency-Head Responsibilities.


The agency head or a designee shall prescribe procedures for --

[(a) thru (q) not shown here. Refer to the FAR cite for their coverage.]
(r) Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies. For services, greater use of  **performance-based**  contracting methods and, therefore, fixed-price contracts (see [37.602-5](#)) should occur for follow-on acquisitions.

(s)

(t)

7.105 -- Contents of Written Acquisition Plans.

In order to facilitate attainment of the acquisition objectives, the plan must identify those milestones at which decisions should be made (see paragraph (b)(18) of this section). The plan must address all the technical, business, management, and other significant considerations that will control the acquisition. The specific content of plans will vary, depending on the nature, circumstances, and stage of the acquisition. In preparing the plan, the planner must follow the applicable instructions in paragraphs (a) and (b) of this section, together with the agency's implementing procedures. Acquisition plans for service contracts or orders must describe the strategies for implementing .

performance-based ► contracting methods or must provide rationale for not using those methods (see [subpart 37.6](#)).

(a) *Acquisition background and objectives* --

(b) *Plan of action* --

(1) *Sources* .

(2) *Competition*.

(3) *Source-selection procedures*..

(4) *Acquisition considerations*.

(i) For each contract contemplated, discuss contract type selection (see Part 16); use of multiyear contracting, options, or other special contracting methods (see Part 17); any special clauses, special solicitation provisions, or FAR deviations required (see [Subpart 1.4](#)); whether sealed bidding or negotiation will be used and why; whether equipment will be acquired by lease or purchase (see Subpart 7.4) and why; and any other contracting considerations. Provide rationale if a ► **performance-based** ► contract will not be used or if a ► **performance-based** ► contract for services is contemplated on other than a firm-fixed-price basis (see 37.102(a) and 16.505(a)(3)).

(ii) For each order contemplated, discuss-

(5) *Budgeting and funding*..

(6) *Product or service descriptions*. Explain the choice of product or service description types (including ► **performance-based** ► contracting descriptions) to be used in the acquisition.

(The remainder of this FAR section is not shown here. Refer to the FAR cite for its complete coverage.)

Subpart 16.5 -- Indefinite-Delivery Contracts

16.505 -- Ordering.

(a) *General*.

(1) The contracting officer does not synopsise orders under indefinite-delivery contracts.

(2) Individual orders shall clearly describe all services to be performed or supplies to be delivered so the full cost or price for the performance of the work can be established when the order is placed. Orders shall be within the scope, issued within the period of performance, and be within the maximum value of the contract.

(3) ► **Performance-based** ► work statements must be used to the maximum extent practicable, if the contract or order is for services (see [37.102\(a\)](#)).

FAR -- Part 37

Service Contracting

37.000 -- Scope of Part.

This part prescribes policy and procedures that are specific to the acquisition and management of services by contract. This part applies to all contracts for services regardless of the type of contract or kind of service being acquired. This part requires the use of ◀ **performance-based** ▶ contracting to the maximum extent practicable and prescribes policies and procedures for use of ◀ **performance-based** ▶ contracting methods (see subpart 37.6). Additional guidance for research and development services is in Part 35; architect-engineering services is in Part 36; information technology is in Part 39; and transportation services is in Part 47. Parts 35, 36, 39, and 47 take precedence over this part in the event of inconsistencies. This part includes, but is not limited to, contracts for services to which the Service Contract Act of 1965, as amended, applies (see Subpart 22.10).

37.102 -- Policy.

- (a) ◀ **Performance-based** ▶ contracting methods (see [subpart 37.6](#)) is the preferred method for acquiring services (Public Law 106-398, section 821). When acquiring services, including those acquired under supply contracts, agencies must--
- (1) Use ◀ **performance based** ▶ contracting methods to the maximum extend practicable, except for--
 - (i) Architect-engineer services acquired in accordance with 40 U.S.C. 541-544 (see part 36);
 - (ii) Construction (see part 36);
 - (iii) Utility services (see part 41); or
 - (iv) Services that are incidental to supply purchases.
 - (2) Use the following order of precedence (Public Law 106-398, section 821(a));
 - (i) A firm-fixed price ◀ **performance-based** ▶ contract or task order.
 - (ii) A ◀ **performance-based** ▶ contract or task order that is not firm-fixed price.
 - (iii) A contract or task order that is not ◀ **performance-based** ▶.
- (The remainder of this FAR section is not shown here. Refer to the FAR cite for its complete coverage.)

37.103 -- Contracting Officer Responsibility.

- (a) The contracting officer is responsible for ensuring that a proposed contract for services is proper. For this purpose the contracting officer shall --

- (1) Determine whether the proposed service is for a personal or nonpersonal services contract using the definitions in [2.101](#) and [37.101](#) and the guidelines in 37.104;
- (2) In doubtful cases, obtain the review of legal counsel; and
- (3) Document the file (except as provided in paragraph (b) of this section) with -
 - (i) The opinion of legal counsel, if any,
 - (ii) A memorandum of the facts and rationale supporting the conclusion that the contract does not violate the provisions in [37.104](#)(b), and
 - (iii) Any further documentation that the contracting agency may require.
- (b) Nonpersonal services contracts are exempt from the requirements of subparagraph (a)(3) of this section.
- (c) Ensure that **performance-based** contracting methods are used to the maximum extent practicable when acquiring services.
- (d) Ensure that contracts for child care services include requirements for criminal history background checks on employees who will perform child care services under the contract in accordance with 42 U.S.C. 13041, as amended, and agency procedures.

Subpart 37.6 -- **performance-based Contracting**

37.600 -- Scope of Subpart.

This subpart prescribes policies and procedures for use of **performance-based** contracting methods.

37.601 -- General.

performance-based contracting methods are intended to ensure that required performance quality levels are achieved and that total payment is related to the degree that services performed meet contract standards. **performance-based** contracts --

- (a) Describe the requirements in terms of results required rather than the methods of performance of the work;
- (b) Use measurable performance standards (i.e., terms of quality, timeliness, quantity, etc.) and quality assurance surveillance plans (see [46.103](#)(a) and [46.401](#)(a));
- (c) Specify procedures for reductions of fee or for reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements (see [46.407](#)); and
- (d) Include performance incentives where appropriate.

37.602 -- Elements of **performance-based Contracting.**

37.602-1 -- Statements of Work.

(a) Generally, statements of work shall define requirements in clear, concise language identifying specific work to be accomplished. Statements of work must be individually tailored to consider the period of performance, deliverable items, if any, and the desired degree of performance flexibility (see [11.106](#)). In the case of task order contracts, the statement of work for the basic contract need only define the scope of the overall contract (see 16.504(a)(4)(iii)). The statement of work for each task issued under a task order contract shall comply with paragraph (b) of this subsection. To achieve the maximum benefits of **performance-based** contracting, task order contracts should be awarded on a multiple award basis (see 16.504(c) and 16.505(b)).

(b) When preparing statements of work, agencies shall, to the maximum extent practicable --

- (1) Describe the work in terms of "what" is to be the required output rather than either "how" the work is to be accomplished or the number of hours to be provided (see [11.002](#)(a)(2) and [11.101](#));
- (2) Enable assessment of work performance against measurable performance standards;
- (3) Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work; and
- (4) Avoid combining requirements into a single acquisition that is too broad for the agency or a prospective contractor to manage effectively.

37.602-2 -- Quality Assurance.

Agencies shall develop **quality assurance surveillance plans** when acquiring services (see 46.103 and 46.401(a)). These plans shall recognize the responsibility of the contractor (see 46.105) to carry out its quality control obligations and shall contain measurable inspection and acceptance criteria corresponding to the performance standards contained in the statement of work. The quality assurance surveillance plans shall focus on the level of performance required by the statement of work, rather than the methodology used by the contractor to achieve that level of performance.

37.602-5 -- Follow-On and Repetitive Requirements.

When acquiring services that previously have been provided by contract, agencies shall rely on the experience gained from the prior contract to incorporate **performance-based** contracting methods to the maximum extent practicable. This will facilitate the use of fixed-price contracts for such requirements for services. (See [7.105](#) for requirement to address **performance-based** contracting strategies in acquisition plans. See also 16.104(k).)

39.104 - Information Technology Services.

When acquiring information technology services, solicitations must not describe any minimum experience or educational requirement for proposed contractor personnel unless the contracting officer determines that the needs of the agency-

(a) Cannot be met without that requirement; or

(b) Require the use of other than a  **performance-based**  contract (see [subpart 37.6](#)).